

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In Re:

James A. Nevins,

Debtor.

Case No. 15-10956-BFK

Chapter 13

Bank of America, N.A., its assignees and/or
successors in interest,

Movant,

v.

James A. Nevins;
Thomas P. Gorman, Trustee,

Respondents.

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

NOW COMES Bank of America, N.A., by counsel, and for its Motion for Relief from Stay against debtor James A. Nevins states as follows:

1. This Court has jurisdiction over the matters herein alleged pursuant to 28 U.S.C. § 1334. This matter constitutes a core proceeding within the meaning of 28 U.S.C. §157 and is a contested matter under the Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

2. On or about March 21, 2015, Debtor filed a Chapter 13 bankruptcy. Debtor has filed a Chapter 13 plan.

3. Debtor owns an interest in the following real estate, to-wit: **1016 Isabella Dr, Stafford, Virginia 22554**, more particularly described as follows:

All that certain lot, piece or parcel of land lying and being in Aquia

Steven L. Higgs, Esq. (VSB # 22720)
Steven L. Higgs, P.C. (VSB # 90566)
9 Franklin Road, S.W.
Roanoke, VA 24011-2403
(540) 400-7990
Counsel for Movant

Magisterial District, Stafford County, Virginia, and designated as Lot Number Three Hundred Fifty (350) on a Plat of Section Three (3), of Aquia Harbour Subdivision, recorded in the Clerk's Office of the Circuit Court of Stafford County, Virginia, in Plat Book 4 at Page 161, to which reference is hereby made for a more particular description of the property. Together with the rights to use in common with others the easements of access over land of Anne M. Moncure as shown on plat recorded in Plat Book 4 at Pages 63 through 66 and designated as Washington Drive.

4. Movant is a creditor of Debtor, being secured by a deed of trust on the above-described property recorded in Clerk's Office of the Circuit Court, Stafford County, Virginia.

5. Bank of America, N.A. endorsed the note in blank as evidenced by the Allonge for the Purpose of Endorsement on page 3 of the note. Movant is in possession of the original note. See **Exhibit A**.

6. On or about May 25, 2012, Debtor executed a deed of trust for the benefit of Bank of America, N.A. See **Exhibit B**, page 1.

7. On or about July 1, 2013, Mortgage Electronic Registration Systems, Inc. assigned the deed of trust to Bank of America, N.A., as evidenced by the Assignment of Mortgage on page 19 of **Exhibit B**, which assignment was recorded in the Clerk's Office of the Circuit Court, County of Stafford, Virginia.

8. Carrington Mortgage Services, LLC services the loan on the Property referenced in this Motion. In the event the automatic stay in this case is modified, this case dismisses, and/or the Debtor obtains a discharge and a foreclosure action is commenced on the mortgaged property, the foreclosure will be conducted in the name of Movant. Movant, directly or through an agent, has possession of the promissory note. Movant will enforce the promissory note as transferee in possession. Movant is the original mortgagee or beneficiary or the assignee of the Mortgage.

9. Under the terms of the plan, Debtor proposed to pay Movant post-petition payments directly, outside of the plan.

10. As of December 3, 2018, the outstanding Obligations are:

Unpaid Principal Balance	\$235,115.18
Unpaid, Accrued Interest	\$18,368.25
Escrow Advances	\$8,584.22
Late Charges Due	\$529.04
Fees Currently Assessed	\$1,874.00
<u>Less: Partial Payments</u>	(\$0.00)
Minimum Outstanding Obligations	\$264,470.69

11. In addition to the other amounts due to Movant reflected in this declaration, as of the date hereof, in connection with seeking the relief requested in the Motion, Movant has also incurred \$1,031.00 in legal fees and costs. Movant reserves all rights to seek an award or allowance of such fees and costs in accordance with applicable loan documents and related agreements, the Bankruptcy Code and otherwise applicable law.

12. The following chart refers only to the number and amount of outstanding post-petition payments due pursuant to the terms of the Note. Any payments that have been or may be received post-petition are applied to the next contractual post-petition date.

Number of Missed Payments	From	To	Monthly Payment Amount	Total Missed Payments
21	04/01/2017	12/01/2018	\$1,486.06	\$31,207.26
Plan Review				\$275.00
Proof of Claim				\$75.00
Less post-petition partial payments:				(\$722.13)
				Total: \$30,835.13

13. Movant lacks adequate protection.

14. For the foregoing reasons, Movant asserts that cause exists sufficient to waive the requirement of Bankruptcy Rule 4001(a)(3), therefore allowing the Order granting the relief sought to be effective upon its entry.

WHEREFORE, Movant moves the Court for relief from the automatic stay as to the above described property pursuant to 11 U.S.C. § 362 so that it may proceed under state law.

Movant further prays for an Order that, in addition to foreclosure, permits activity necessary to obtain possession of said collateral; therefore, all communications sent by Movant in connection with proceeding against the property including, but not limited to, notices required by state law and communications to offer and provide information with regard to a potential Forbearance Agreement, Loan Modification, Refinance Agreement, Loss Mitigation Agreement, or other Loan Workout, may be sent directly to Debtor.

/s Steven L. Higgs

Steven L. Higgs, Esq. (VSB # 22720)
STEVEN L. HIGGS, P.C. (VSB # 90566)
9 Franklin Road, S.W.
Roanoke, VA 24011-2403
(540) 400-7990
(540) 400-7999 fax
higgs@higgslawfirm.com
Counsel for Movant
VAC.241-166.NF

Certificate of Service

I hereby certify that on Monday, December 10, 2018, a true copy of this Motion for Relief from Stay was mailed or electronically served to:

James A. Nevins
1016 Isabella Drive
Stafford, VA 22554

Tommy Andrews, Jr., Esquire
Tommy Andrews, Jr. P.C.
122 North Alfred St.
Alexandria, VA 22314

Thomas P. Gorman
300 North Washington Street, Suite 400
Alexandria, VA 22314

/s/ Steven L. Higgs.